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TESLA, INC.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TESLA, INC.,
v.
MARTIN TRIPP,
Plaintiff,
Defendant.

Case No. 3:18-cv-00296-LRH-CBC

**DECLARATION OF ELON MUSK IN
SUPPORT OF TESLA, INC.'S MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, FOR PARTIAL
SUMMARY JUDGMENT**

**FILED UNDER SEAL UNDER COURT
ORDER ECF No. 44.**

AND RELATED COUNTERCLAIMS

I, Elon R. Musk, declare as follows:

1. I am the CEO of Tesla, Inc., Plaintiff and Counterclaim Defendant in this action. I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

2. I submit this declaration in support of Tesla's Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment.

Tesla Increases Production of the Model 3 in 2018

3. Tesla is a publicly-traded electric car and clean energy company. We employ more than 45,000 people worldwide, including more than 7,000 people at the Gigafactory near Reno, Nevada.

4. In 2017, Tesla began production of the Model 3, an affordable fully electric four-door sedan.

5. In the fall of 2017 and throughout 2018, Tesla ramped up production of the Model 3 in our Fremont, California factory and in the Gigafactory. The Gigafactory, which employed more than 6,000 people as of the summer of 2018, produces motors and batteries for the Model 3.

6. In October 2017, Tesla announced in its Third Quarter Update that we expected to "achieve a run rate of 5,000 [Model 3] vehicles per week by the end of 2017." This announcement and the ambitious goal was the subject of great interest, controversy, and debate until Tesla finally achieved the goal of producing 5,000 Model 3 cars per week in July 2018. The work performed at the Gigafactory was vital to reaching this goal.

7. In 2017 and 2018, Tesla's production of the Model 3, our production goals, and Tesla's operation, management, and finances were the focus of much interest and attention from the media, investors, government, and the public at large. That remains the case to this day.

8. The press reported on Tesla's operations, finances, methods, and progress toward meeting our Model 3 production goals. For example, in April 2018, *CBS This Morning* broadcast a lengthy story about Tesla's production issues at the Model 3 factory in Fremont. A true and correct copy of the story is attached hereto as **Exhibit A**. Throughout 2018,

commentators, the media, and high profile financiers debated Tesla's value, financial position, and ability to reach its production goals. Tesla's achievements and methods were under significant scrutiny, and the stories and surrounding debate obviously had the potential to impact Tesla's employees and shareholders.

Business Insider Publishes Stories Containing Confidential Tesla Information

9. On June 4, 2018, one day before Tesla's Annual Shareholder Meeting on June 5, 2018, *Business Insider* published an article titled "Internal documents reveal Tesla is blowing through an insane amount of raw material and cash to make Model 3s, and production is still a nightmare." A true and correct copy of the article is attached hereto as **Exhibit B**.

10. The author of the article, Linette Lopez, wrote that she reviewed "[i]nternal documents" which claimed to show that Tesla "expects that as much as 40% of the raw materials used to produce batteries and driving units manufactured at Tesla's Gigafactory in Nevada need to be scrapped or reworked by employees before they are sent to Tesla's factory in Fremont, California, and assembled into Model 3s." The article also claimed that "Tesla has spent almost \$150 million on scrap materials so far this year, according to internal estimates." The article also described a number of confidential internal Tesla emails, charts, and data.

11. On June 6, 2018, one day after Tesla's Annual Shareholder Meeting, *Business Insider* published a second article by Linette Lopez titled "Tesla's new Gigafactory robots that are supposed to help it ramp up Model 3 production aren't working yet." A true and correct copy of the article is attached hereto as **Exhibit C**. The article claimed that *Business Insider* had access to a video taken from the factory floor of the Gigafactory of a "dormant machine" meant to "put together the modules that make up Tesla's battery packs." The article also reported that it obtained information about the machine from an anonymous source at Tesla.

12. Although much of the information reported in the *Business Insider* articles was overstated, inaccurate, or outright false, it was clear that a Tesla employee was providing sensitive confidential and non-public internal Tesla data and information to Ms. Lopez. The discovery that a Tesla employee was leaking confidential information was disturbing and deeply concerning.

13. Tesla, like most companies, is very protective of its intellectual property, non-public information, confidential data, and trade secrets. Tesla employees agree to certain non-disclosure obligations as part of their employment. For instance, Tesla employees agree to [REDACTED] [REDACTED] [REDACTED] They also agree to not [REDACTED] [REDACTED] True and correct copies of those agreements are attached hereto as **Exhibits D and E.**

Tesla Learns That Martin Tripp Was The Source of the Leaks to *Business Insider*

14. I understand that Tesla began investigating the suspected leak shortly after the *Business Insider* articles were published.

15. I learned that two members of Tesla's security team, Nicolas Gicinto and Jake Nocon, interviewed Martin Tripp on or around June 14 and June 15, 2018 as part of the investigation into the leak.

16. Mr. Gicinto provided me with an oral summary of his interviews with Mr. Tripp on the weekend of June 16 and 17, 2018. Mr. Gicinto informed me that Mr. Tripp admitted to being the source of the *Business Insider* articles. Mr. Gicinto informed me that Mr. Tripp admitted to [REDACTED] [REDACTED] and to exporting this confidential information to Ms. Lopez. Mr. Gicinto further reported that Mr. Tripp admitted to sharing other confidential information with Ms. Lopez and to reaching out to other media outlets in an effort to share confidential Tesla information. According to Mr. Gicinto, Mr. Tripp admitted that he attempted to recruit additional sources inside the Gigafactory to share Tesla's information with third parties. Mr. Gicinto also told me that in the interviews, [REDACTED] [REDACTED] which I understood to be the motivation for Mr. Tripp's actions.

17. I understood from Mr. Gicinto's report that Mr. Tripp admitted to taking steps to cover his tracks and to hide his actions from Tesla. Mr. Gicinto informed me that the

1 investigation uncovered evidence that [REDACTED]

2 [REDACTED] In addition, because [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 18. I was bothered and deeply concerned by Mr. Gicinto's report and Mr. Tripp's
7 actions. I understood Mr. Tripp's actions to be a deliberate attempt to damage and harm Tesla
8 and its mission.

9 19. After receiving Mr. Gicinto's report, on June 17, 2018, I wrote and sent an
10 internal email to Tesla's employees to inform them of the misconduct the investigation
11 uncovered to date and to instruct them to stay vigilant of similar efforts to misappropriate
12 Tesla's confidential information and harm the company. I did not identify Mr. Tripp by name in
13 the email. The email was sent only to Tesla employees, who all had an interest in Mr. Tripp's
14 damaging actions and my message that we should all remain vigilant of efforts to harm the
15 company. To my knowledge, I did not send the email to any person outside of Tesla. I did not
16 intend or expect that the email would be transmitted to any third parties outside of the company.
17 A true and correct copy of the internal June 17, 2018 email is attached hereto as **Exhibit F**.

18 20. The content of the email was based upon the information that I received from Mr.
19 Gicinto regarding the investigation. I believed that the information was the best, most accurate
20 description of the events and results of the investigation as of June 17, 2018. At the time that I
21 sent the email, I did not know or believe any statements in the email to be false. Nor did I
22 entertain any serious doubts about their truth.

23 21. I understand that Tesla terminated Mr. Tripp on or around June 19, 2018 and that
24 Tesla filed this lawsuit on June 20, 2018.

25 **The June 20, 2018 Report That Mr. Tripp Was A Threat To The Gigafactory**

26 22. On the morning of June 20, 2018, I received an email from Mr. Tripp. Mr. Tripp
27 initiated an email conversation by writing to me, "Don't worry, you have what's coming to you
28

1 for the lies you have told to the public and investors.” I perceived this message to be a threat
2 and responded to the email.

3 23. I responded to Mr. Tripp, and we exchanged emails until 10:28 a.m. that
4 morning. A true and correct copy of the June 20, 2018 email exchange between Mr. Tripp and
5 me is attached hereto as **Exhibit G**.

6 24. Later that afternoon, I received serious and deeply concerning news. I was
7 informed by Tesla security personnel that a threat had been made to the Gigafactory. I was told
8 that Tesla received a phone call warning the company that Mr. Tripp was going to come and
9 shoot people at the Gigafactory. I was also informed that Tesla security alerted the police and
10 posted additional security personnel at the Gigafactory.

11 25. At 4:38 p.m., I received an email from Julia Carrie Wong, a reporter for *The*
12 *Guardian*. Ms. Wong informed me that her outlet would be publishing a story about Tesla’s
13 lawsuit against Mr. Tripp. Ms. Wong also knew about the email exchange I had with Mr. Tripp
14 that morning, and asked me if I wanted to comment on it.

15 26. At 5:29 p.m., I responded to Ms. Wong’s email by providing her the entire email
16 exchange between Mr. Tripp and I from that day. I also wrote that “I was just told that we
17 received a call at the Gigafactory that [Mr. Tripp] was going to come back and shoot people.
18 The police have been alerted and we have posted additional security. Our comms team can fill
19 you in.” A true and correct copy of my June 20, 2018 email correspondence with Ms. Wong is
20 attached hereto as **Exhibit H**.

21 27. My email to Ms. Wong was consistent with the information that I had received
22 earlier that day from Tesla security. I understood my statement to be true at the time I made it
23 and I did not know or believe that any statements in the email could be false. Nor did I entertain
24 any serious doubts as to their truth.

25 28. I understand that after my email to Ms. Wong, Tesla’s Communications
26 Department made additional statements to Ms. Wong and other members of the press. I was not
27 involved in drafting or preparing any of those statements.

28 29. I did not make the call of a threat to Tesla on June 20, 2018.

The July 5, 2018 Tweets To Ms. Lopez

30. In late June or early July 2018, Mr. Gicinto informed me that he had interviewed one of Mr. Tripp's former co-workers in connection with the leak investigation. According to Mr. Gicinto, that former co-worker stated during the interview that Mr. Tripp implied multiple times that he had been paid for providing information to Ms. Lopez, and had guaranteed the co-worker that he would be paid as well for proving confidential Tesla information to Ms. Lopez.

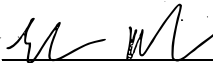
31. I did not know or believe this information to be false. Nor did I entertain serious doubts as to its truth.

32. On July 5, 2018, after I received this information from Mr. Gicinto, I posted a tweet directed to Ms. Lopez. In my tweet, I wrote the following: "Indeed, very simple question. To be specific @lopezlinette, did you compensate or promise to compensate Martin Tripp for inside information about Tesla? Did he, under that inducement, provide you with exaggerated negative info, which you printed but turned about to be untrue?" A true and correct copy of my July 5, 2018 tweet is attached hereto as **Exhibit I**.

33. In posting this tweet, I did not intend to make or imply any statement of fact. I was simply asking questions of Ms. Lopez.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this document was executed in Los Angeles, California.

DATED: March 31, 2020

By 
Elon R. Musk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the March 31, 2020, a true and correct copy of the foregoing **DECLARATION OF ELON MUSK IN SUPPORT OF TESLA, INC.'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT** was electronically filed with the Clerk of the Court by using CM/ECF service which will provide copies to the following counsel of record registered to receive CM/ECF notification.

/s/ CaraMia Gerard

An employee of McDonald Carano LLP